IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3126 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMBHAI KHUSHALBHAI PATEL

Versus

ODE URBAN CO OP BANK LTD

Appearance:

1. Special Civil Application No. 3126 of 2004

MR RAJESH K SHAH for Petitioner No. 1

G S THAKKAR for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/09/2004

ORAL JUDGEMENT

1. Rule. Mr.G.S.Thakkar, learned advocate waives service of rule on behalf of respondent No.1. With the consent of the learned advocates, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Gujarat Co-operative Societies Tribunal, Ahmedabad, dated 23rd December, 2003, passed in Revision Application No.455 of 2003, in allowing the revision application filed by the respondent No.1 - Bank and quashing and setting aside the order passed by the Board of Nominee passed below Exhs.48 and 61 by which the Board of Nominee has passed an order to hand over the passport to the petitioner.

3. In a suit being Lavad Case No.931 of 2001 filed by the respondent No.1 Bank, an application was submitted by the bank for attachment of the passport of the petitioner. The learned Board of Nominee passed an order below Exh.44. It appears that, the petitioner moved an application Exh.48 for staying the order passed below Exh.44, and the learned Board of Nominee passed the order on 23rd December, 2002, to stay the order passed below Exh.44. It also further appears that, subsequently, an application below Exh.61 was submitted by the petitioner for quashing and setting aside the order passed below Exh.44, and the learned Board of Nominee passed an order on 9th October, 2003, to quash and set aside the order passed below Exh.44 by which an order was passed to attach the passport of the petitioner.

4. Being aggrieved and dissatisfied with the order passed by the learned Board of Nominee vide Exhs.48 and 61, the respondent No.1-Bank preferred revision application before the Gujarat State Co-operative Tribunal. The Tribunal found that the order below Exh.61 was passed without giving an opportunity to the respondent No.1-Bank, and considering the merits of the matter, passed an order of setting aside the order passed below Exh.48 as well as Exh.61 and confirmed the order passed below Exh.44 till the final disposal of the Lavad Case No.931 of 2001.

5. Being aggrieved and dissatisfied with the same, the petitioner had preferred present Special Civil Application under Article 226 of the Constitution of India.

6. Mr.Shah, the learned advocate appearing on behalf of the petitioner, has submitted that, as such, the

orders passed below Exh.44 was without giving any opportunity to the petitioner, and the passport of the petitioner was attached, and therefore, he has submitted that, the order passed by the Gujarat State Co-operative Tribunal, dated 23rd December, 2003, in setting aside the order passed below Exhs.48 and 61 are required to be quashed and set aside.

7. In response to the notice issued by this Court, Mr.G.S.Thakkar, learned advocate appears on behalf of the respondent No.1, and has submitted that, the present Special Civil Application, at the instance of the petitioner, looking to his conduct is not required to be entertained, and affidavit-in-reply is also filed on behalf of respondent No.1-Bank. He has further submitted that, in view of the fact that the order passed below Exh.61 was without giving an opportunity to the respondent No.1 - Bank, and the order passed by the Gujarat Co-operative Tribunal is just and proper and is not required to be interfered with.

8. Heard the learned advocates for the parties.

9. It is an admitted position that, while passing the order below Exh.61, the respondent No.1-Bank was not heard and the order came to be passed setting aside the order by which the passport of the petitioner was attached. In that view of the matter, it cannot be said that the order passed by the Gujarat Co-operative Tribunal is in any way errorneous or illegal. However, while passing the impugned judgment and order, the tribunal has passed an order to continue the order passed below Exh.44 till the final disposal of the Lavad Case No.931 of 2001. In fact, the tribunal ought to have passed an order remanding the matter to the Board of Nominee for passing a fresh order with regard to the attachment of the passport of the petitioner after giving an opportunity to the parties concerned including the respondent No.1, instead of making the order passed below Exh.44 confirmed till the final disposal of the Lavad Case No.931 of 2001.

9. In that view of the mater, the judgment and order passed by the tribunal, to that extent, is required to be modified. Under the circumstances, it is directed to the Board of Nominee, Anand, to decide and dispose of the application Exh.61 afresh after giving an opportunity to the petitioner as well as to the respondent No.1 - Bank. Such exercise is required to be done by learned Board of Nominee, Anand, within a period of eight weeks from the date of receipt of this order.

10. With the aforesaid observations and directions, this petition is disposed of. Rule is discharged with no order as to costs. D.S. is permitted.

(M.R. Shah, J.)

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